IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 33057 of 2007(I)

PETITIONER:

SANY FRANCIS, S/O.LATE K.C.FRANCIS
AGED 43 YEARS, KATTRUKUDIYIL HOUSE
48/2005 C, R.M.V.ROAD
ELAMAKKARA, KOCHI-682 026.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS:

1. STATE OF KERALA REP. BY SECRETARY
HOME DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM, PIN 695 001.

2. SUB INSPECTOR OF POLICE
KAKKANAD POLICE STATION,
PIN 682 030.

3. ERNAKULAM DISTRICT HEADLOAD & GENERAL
MAZDOOR SANGHAM,HAVING REG. NO. 494/77 (BMS)
PUMP JUNCTION, ALUVA, PIN 683 101,
REP. BY ITS SECRETARY.

BY GOVT. PLEADER SRI.P.A.SALIM
BY ADV. SRI.KRISHNADAS P. NAIR
SRI.HARIDAS P.NAIR
SMT.K.L.SREEKALA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 33057/07

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE TAX RECEIPT DT. 5.1.07 SHOWING PAYMENT OF TAX FOR THE PROPERTY OWNED BY THE PETITIONER

EXT. P2(a) TRUE COPY OF THE BUILDING PERMIT DT. 7.2.07 ISSUED TO THE PETITIONER FROM THE KALAMASSERY MUNICIPAL COUNCIL

EXT. P2(b) TRUE COPY OF THE BUILDING PERMIT FEE REMITTED BY THE PETITIONER DT. 8.2.07

EXT. P3 PHOTOGRAPH SHOWING THE PRESENT STAGE OF WORK OF THE BUILDING IN THE PETITIONER'S PROPERTY

EXT. P4 TRUE COPY OF THE NOTICE DT. 2.11.07 ISSUED BY THE THRD RESPONDENT UNION TO THE PETITIONER

EXT. P5 TRUE COPY OF THE COMPLAINT DT. 3.11.07 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT

/TRUE COPY/

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

W.P.(C)No. 33057 of 2007 I

JUDGMENT

Balakrishnan Nair, J.

The petitioner prays for protection to construct a building. He submits that he is willing to engage the registered headload workers of the area for loading and unloading works in the site. But, the third respondent demands that its members should be engaged for the construction work also. Since the petitioner is not willing to engage them for the construction work, they are obstructing the same, it is submitted. Therefore, he moved the police by filing Exhibit P5 representation. When the police did not extend any help, this writ petition is filed, seeking appropriate reliefs.

2. We heard the learned Government Pleader for the official respondents and also the learned

counsel for the third respondent. The learned counsel for the third respondent submitted that for the construction work also the local workmen may be engaged. The petitioner is unwilling to do that.

3. The submission of the petitioner that he will do the loading and unloading works in the site only using the registered headload workers of the area is recorded. No statute has been brought to our notice, which enables the third respondent to claim that its members should be engaged for the construction work also. In the absence of any right, they cannot obstruct the petitioner from engaging the workmen of his choice to do the construction work. If the members of the third respondent has got any right in this regard, they may move other forums for establishing their right. Without prejudice to that right, if any obstruction is caused to the construction of the building, claiming employment by the members of the third respondent,the police shall remove the obstruction.

If there is any obstruction, the petitioner shall move the police. It is made clear that this protection order shall not be used as a shield for making any illegal or unauthorised construction. If the construction is in violation of the building permit or the Building Rules or any other statute, the competent authorities will be at liberty to take appropriate action against the petitioner, notwithstanding this protection order.

The writ petition is disposed of as above.

(K.Balakrishnan Nair, Judge)

14th November, 2007

(K.P.Balachandran, Judge)

tkv